IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 6-2-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.2074 of 2003

Small Industries Development Bank of India,
Vikas Deep, 6th & 7th Floor,
22, Station Road,Lucknow - 226 019
presently at "SIDBI Towers",
15, Ashok Marg, Lucknow - 226 001. ... Appellant

Vs.

1. Sartime Horological Pvt. Ltd.,
Plot No.59,
Electrical & Electronic Industrial Estate,
Perungudi,
Madras - 600 096.

2. Tamil Nadu Industrial Investment
Corporation Limited,
473, Anna Salai,
Nandanam, Chennai - 600 035. ... Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated10.4.2003 in W.P.No.16197 of 2000.

WP.No.16197/2000 : Petition presented to this Court under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to quash the letter dated 11.03.1998, 06.09.2000, 14.09.2000 and 18.09.2000 of the 1st Respondent and consequently to direct the 1st Respondent to treat the amount paid by the petitioners as being in full and final.

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For Appellant : Mr.R.Krishnamurthy,
Senior Counsel
for Mr.D.Mukundan
For 1st Respondent : Mr.Murari
For 2nd Respondent : Mr.M.J.Jaseem Mohamed

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J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed in W.P.No.16197 of 2000 dated 10.4.2003 allowing the writ petition filed by the first respondent herein. The second respondent in the writ petition is the appellant herein.

2. The brief facts necessary for disposal of the writ appeal are as follows.

(a) The first respondent Small Scale Industry was set up for manufacturing of Quarts, Alarm Time Pieces, Watches, Clocks, etc. It applied for financial assistance of a sum of Rs.41 lakhs before the second respondent herein (TIIC) and the second respondent by letter dated 10.5.1991 sanctioned a term loan of Rs.30,00,000/-. Under clause 5, the rate of interest payable is in two tier system i.e., 14 percentage for a period of 8 months as first tier and 15% thereafter as second tier.

(b) The second respondent by letter dated 11.7.1991 informed the first respondent that the appellant sanctioned Rs.25.50 lakhs by way of re-finance and also informed the rate of interest at 14% per annum, which would be applicable for two years from the date of execution of loan documents and thereafter at the rate of 15%. The first disbursement of the said loan was made to the first respondent on 27.9.1991.

(c) The appellant by circular dated 9.1.1991, informed all the eligible financial institutions that in supercession of the existing interest rate structure, they have decided to raise the interest rates of term loans to the Units in the Small Scale Sector under their re-finance scheme and a revised rate of interest was at 18% and the interest of re-finance at 15%. It is further stated that this will be made applicable for the loans sanctioned after 9.10.1991.

(d) Some of the lending institutions like the second respondent expressed difficulties in respect of the cases where the loans were disbursed either partially or fully prior to 9.10.1991 but re-finance against them could not be availed of due to the circumstances beyond their control and that they requested the appellant to apply the pre-revised rate of interest on loans/re-finance in such cases.

(e) The appellant considering the said request, issued a circular on 8.5.1995 to all the lending institutions to change the interest at the rate prevailing as on the date of first disbursement of the loan irrespective of the date of availing of re-finance from the second respondent, provided the corresponding benefit is passed on to the ultimate borrowers with retrospective effect.

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(f) According to the first respondent, in terms of the said circular dated 8.5.1995 the first respondent (writ petitioner) is entitled to get reduction in interest rate since the loan has been availed and re-finance sanctioned before 9.10.1991. On 17.12.1997, the first respondent also settled the entire principal and interest amount by calculating the interest in accordance with the circular dated 8.5.1995. It is further stated that the second respondent failed in providing the information sought for by the appellant in para 4 of the circular within the time frame. Consequently the appellant negatived the request of the second respondent for reduced rate of interest and thereby the second respondent demanded higher rate of interest on the ground that the appellant has not come forward to offer the reduced rate of interest to the first respondent herein.

(g) The first respondent therefore submitted that because of the failure on the part of the second respondent in furnishing the details as requested by the appellant as per the circular, the second respondent is not entitled to claim higher rate of interest when the first respondent is entitled to the rate of interest, which prevailed prior to 9.10.1991.

3. The second respondent herein who was the first respondent in the writ petition filed counter affidavit and accepted the averments in the affidavit. Further, it is contended therein that pursuant to the circular dated 8.5.1995 the TIIC furnished the particulars about the differences of interest charged by the appellant including that of the first respondent/writ petitioner to the appellant on 2.6.1995 for their consideration. A list of available automatic re-finance cases were identified and forwarded to the appellant on 25.8.1995 with further intimation that an exhaustive list would be sent including omission, if any, after ascertaining from the TIIC branches and a final list was sent to the appellant on 5.10.1995 and 12.10.1995 in normal re-finance schemes and automatic re-finance schemes respectively. The appellant by letter dated 11.2.1995 requested the TIIC to submit a detailed claim mentioning the amount to be refunded along with full working sheet thereafter. According to TIIC, the officials of the appellant from southern region office met the officials of TIIC and informed that normal re-finance scheme cases would be taken thereafter due to work load and the matter was kept pending by the appellant even though the TIIC made several reminders for expediting the approval. However, on 6.2.1998 the appellant sent regret letter informing their inability to consider the request without assigning any reason. Hence the TIIC pleaded that it was unable to extend lower rate of interest to the first respondent/writ petitioner since it is a primary lending institution obtaining re-finance from the appellant. It is also the case of the TIIC that the appellant has not come forward to honour their own commitment given in the circular dated 8.5.1995 and therefore the TIIC was left with no other option except to charge higher rate of interest from the first respondent/writ petitioner.

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4. The appellant who was the second respondent in the writ petition filed counter affidavit and stated that it is true that by circular dated 8.5.1995 benefit is giving to the persons who raised loans similar to the first respondent, but however, due to the delay in furnishing the details by TIIC, the benefit could not be extended to the first respondent. Para 7 of the counter affidavit reads as follows,

> "7. The first respondent did not comply with the mandatory requirement of the crediting back the excess interest in the eligible accounts and submitting the list with particulars to this respondent on or before 30.9.1995 as per circular dated 8.5.1995. The very object of remission in the rate of interest agreed to by this respondent was to pass on the benefit to the ultimate borrowers by way of refinance. By reason of default in compliance, the 1st respondent rendered himself ineligible for refinance of the remission in the interest. This respondent therefore rejected the claims of the 1st respondent by letter dated 6.2.1998."

5. The learned single Judge, taking note of the circular dated 8.5.1995, particularly of the fact that no time limit is prescribed by the appellant, held that the first respondent is entitled to get the reduced interest rate and pointed out that TIIC in its letters dated 2.6.1995, 28.5.1995, 5.10.1995, 12.10.1995, 29.2.1996 and 14.10.1998 requested the appellant to advise for reduce the rate of interest so as to enable TIIC to pass on the benefit to the borrowers. The learned Judge also noted that the circular, which gives benefit having not prescribed any outer time limit, the appellant is not justified in denying the benefit to the first respondent even if the TIIC has submitted the details belatedly. On the said finding, the learned Judge directed the appellant to pass on the benefit of reduced interest rate to the first respondent/writ petitioner in terms of the circular dated 8.5.1995 within four weeks and on honouring the commitment by the appellant, TIIC was directed to refund the interest if any paid over and above the interest rate that was prevailing on the date of the first disbursement of the loan.

6. The learned senior counsel appearing for the appellant contended that due to the delay in furnishing the details by TIIC, the appellant was not in a position to give the benefit of the circular dated 8.5.1995 to the first respondent, for which the TIIC alone is liable and the appellant cannot be directed to honour the commitment as the TIIC failed to discharge its duty in sending the details in time. The learned Senior Counsel for the appellant further submitted that the first respondent herein is agitating the matter and therefore even if the benefit given by the learned single Judge is upheld in this judgment, the same may not be treated as precedent in other cases.

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7. The learned counsel for TIIC submitted that the details were furnished to the appellant on 2.6.1995, 25.8.1995, 5.10.1995 and 12.10.1995 and therefore TIIC is not responsible for not extending the reduced rate of interest by the appellant to the first respondent.

8. The learned counsel for the first respondent also supported the contention of TIIC and stated that in terms of the circular dated 8.5.1995, the first respondent is entitled to get the benefit of the reduced rate of interest, which the TIIC is willing to pass on.

9. We have considered the rival submissions made by the learned counsel for the appellant as well as the respective counsel for the respondents in the light of circular dated 8.5.1995 and the correspondence made by TIIC to the appellant.

10. The facts in this case are not in dispute, that is as to the eligibility of the first respondent to get the benefit of the reduced interest rate. The same is also accepted by the appellant in the counter affidavit at para 7, extracted above. The circular dated 8.5.1995 reads as follows,

"Circular No.F1.6/95-96

Dear Sir,

Interest Rate Structure under our Refinance Scheme

Please refer to paragraph 3(iii) of our circular No.F1.21/91-92 dated October 09, 1991 in terms of which the rates of interest as indicated in the Annexure-I to the above circular would also be applicable to all cases where the term loan and refinance there against have been sanctioned prior to October, 09, 1991, but not disbursed as on that date.

2. We have been advised by the primary lending institutions (PLIs) that the above stipulation is causing difficulties especially in respect of cases where the loans have been disbursed (either partly or fully) prior to October, 09, 1991 but refinance there against could not be availed of by them due to circumstances beyond control. Some of the PLIs have, therefore, requested us to apply the pre-revised applicable rates of interest on loans/refinance in such cases.

3. We have examined these requests and advise that it has been decided that in such cases, the rates of interest on loans/refinance there against would be the rates prevailing as on the date of first disbursement of the loan irrespective of the date of availment of refinance by the PLIs from SIDBI, provided the corresponding benefit is

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passed on to the ultimate borrowers with retrospective effect. However, in cases where the PLIs have been permitted by us to avail of refinance after the expiry of the period of validity of the original sanction, the rates of interest on refinance thus availed of would be in accordance with interest rate structure prevailing as on the date of grant of such extension.

4. In view of the foregoing, we shall be glad if you will please furnish our respective offices with the details of such cases indicating all the relevant particulars including the amount of loan/refinance, the amount and date of first disbursement of loan, the rate of interest charged on loan/refinance etc., in which you consider that the interest rates are to be revised so as to enable SIDBI to work out the excess amount of interest, if any, recovered on refinance and adjust the same in our interest demand for the half year ending November, 30, 1995.

5. We shall be glad if you will please bring the contents of this circular to the notice of all your offices; meanwhile please acknowledge receipt.

Yours faithfully,

Sd/- **********
(P.S.Sundararaman)
General Manager."

From the perusal of the said circular, we are satisfied that no outer time is given to the TIIC or finance institutions to send the report claiming reduced rate of interest.

11. The first respondent, having availed the loan from the TIIC and in view of its entitlement to get reduction in the interest rate in terms of the circular of the appellant, above referred, it is not open to the appellant to deny the benefit to the first respondent on the alleged ground that TIIC has not submitted the details in time. The rejection order made by the appellant is a non-speaking order, without assigning any reason. In the light of the counter affidavit filed by the appellant before the learned single Judge accepting the eligibility of the first respondent to get the benefit and the TIIC having shown its willingness to pass on the benefit to the first respondent, appellant is not right in contending that the first respondent is not entitled to get the benefit at this stage.

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12. Hence we are of the view that the order of the learned single Judge is legal and valid and the appellant is bound to implement the same. We have also considered the bona fide prosecution of the first respondent in this matter. The order of the learned single Judge, which we have confirmed in this judgment, shall not be taken advantage of by others for the old matters, for which no claim is made so far.

13. In the result, the writ appeal is dismissed with the above observations. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr

To

1. The Tamil Nadu Industrial Investment Corporation Limited,
473, Anna Salai, Nandanam, Chennai - 600 035.

2. The Small Industries Development Bank of India,
Vikas Deep, 6th & 7th Floor,
22, Station Road, Lucknow - 226019.
(Presently at 'SIDBI' Towers,
15 Ashok Marg, Lucknow - 226001.)

1 cc To Mr.D.Mukundan, Advocate, SR.6863.
1 cc To Mr.R.Murari Advocate, SR.7394.
1 cc To Mr.M.J.Janeem Mohammed, Advocate, SR.7481.

W.A.No.2074 of 2003

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